

Michael Wilkerson (WY SBN 5-2184)
 Wilkerson & Bremer Law Group, LLC
 400 South Kendrick Avenue, Suite 203A
 P.O. Box 607
 Gillette, Wyoming 82717
 Tel.: 307-686-6347
 Fac.: 307-687-0216

Martin P. Cohn (CA SBN 129289)
 (*Pro Hac Vice*)
COHN RENGO
 314 East Carrillo Street, Suite 7
 Santa Barbara, CA 93101
 Tel.: (805) 569-2223
 Fac.: (805) 682-4215

Attorneys for Plaintiff Robert M. Lane

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF WYOMING

ROBERT M. LANE,

Plaintiff,

v.

LUCAS E. BUCKLEY, et al.,

Defendants.

Case No. 2:15-cv-00155-NDF

**PLAINTIFF ROBERT LANE'S
 MOTION TO COMPEL THE
 DEPOSITION OF DEFENDANT
 PATRICIA E. LANE AND TO
 CONTINUE ALL TRIAL RELATED
 DATES IN THIS ACTION**

*[Assigned to the Honorable Nancy D.
 Freudenthal, Chief Judge]*

TO THE UNITED STATES DISTRICT COURT, ALL PARTIES AND THEIR ATTORNEYS
 OF RECORD:

1 Plaintiff Robert Lane, by and through his attorneys, COHN RENGO, hereby moves this
2 Court to compel Defendant Patricia E. Lane to attend her deposition and to continue all trial
3 related dates at least three months, sufficient to allow a meaningful discovery to take place in this
4 action.

5
6 **I. INTRODUCTION**

7
8 **A. Factual Background**

9 Plaintiff Robert Lane seeks an order compelling Defendant Patricia E. Lane to appear at
10 her duly noticed deposition and to continue all trial related dates in this action.

11 Defendant Patricia E. Lane has knowingly conspired to defraud Plaintiff Robert M. Lane
12 of his retirement accounts and IRA funds. Documents show that she has personally received at
13 least \$2,029,682.42, and caused the illegal diversion of at least \$5,602,514.25, with the aid of her
14 attorneys and Colleen Lane and Matthew Lane. (See: Declaration of Plaintiff Robert Lane in
15 Support of Motion to Compel the Deposition of Patricia E. Lane and to Continue All Trial
16 Related Dates in the Action, served and filed herewith as "Exhibit 1.")

17
18 On or about October 21, 2009, Patricia E. Lane represented to the Bank of Jackson Hole
19 that she was the account-holder for the Penobscot Enterprises Defined Benefit Pension Trust a
20 duly formed retirement account compliant with ERISA at that time. (See: Exhibit 2, served and
21 filed herewith. BOJH 000514 and BOJH 000547.)

22 On or about November 20, 2009, DFWU, LLC was created as a Delaware limited
23 liability company. (See: Exhibit 3, served and filed herewith)

24
25 On May 13, 2010, Penobscot Enterprises Defined Benefit Pension Trust purchases
26 61.84% of DFWU, LLC for 1,053,933.22. (See: Exhibit 4, served and filed herewith. BOJH
27 000500.)
28

1 On January 26, 2011, the Bank of Jackson Hole contacted Patricia E. Lane that the
2 Robert M. Lane IRA and the Penobscot Enterprises Defined Benefit Pension Trust owned
3 \$1,894,053.11 of DFWU, LLC. (See: Exhibit 5, served and filed herewith. BOJH 538-541)

4 On March 31, 2011 Patricia E. Lane represented herself as Manager of DFWU, LLC.
5 (See: Exhibit 6, served and filed herewith. BOJH 000537.)

6 As of Dec. 30, 2011 the Penobscot Enterprises Defined Benefit Pension Trust held a
7 61.84% interest in DFWU, LLC with a market value of 1,196,386.86. Patricia E. Lane was still
8 the trustee of that trust. (See: Exhibit 7, served and filed herewith. BOJH 000523.)

9 As of December 31, 2011, The DFWU, LLC account contained \$1,909,096.51. (See:
10 Exhibit 8, served and filed herewith BOJH 000561.)

11 On Jan. 3, 2012, \$900,574.25 was distributed from the Penobscot Enterprises Defined
12 Benefit Pension Trust to purchase an interest in DFWU, LLC. (See: Exhibit 9, served and filed
13 herewith BOJH 535.)

14 The 2012 Tax Information Statement for the DFWU, LLC Custodial account shows that
15 \$2,027,682.42 is transferred from the DFWU, LLC Custodial Account and wired to the personal
16 bank account of Patricia E. Lane and Patricia A. Lane. (See: Exhibit 10, pages 25-26, served and
17 filed herewith. BOJH 000622-000658.)

18 These transactions were as follows:

- 19 1. August 24, 2012 \$178,500.00 (Exhibit 10, page 25. BOJH 000645.)
- 20 2. September 4, 2012 \$421,000.00 (Exhibit 10, page 25. BOJH 000645.)
- 21 3. September 7, 2012 \$106,000.00 (Exhibit 10, page 25. BOJH 000645.)
- 22 4. October 4, 2012 \$555,784.95 (Exhibit 10, page 26. BOJH 0000646.)
- 23 5. October 10, 2012 \$369,397.47 (Exhibit 10, page 26. BOJH 0000646.)
- 24 6. October 31, 2012 \$397,000.00 (Exhibit 10, page 26. BOJH 0000646.)

1 The Wells Fargo Bank records showing Patricia E. Lane and Patricia A. Lane's receipt of
2 those funds is attached hereto as "Exhibit 11."

3 As of February 26, 2013, Patricia A. Lane represents that she is president of DFWU.
4 LLC, and Patricia E. Lane represents that she is Manager of DFWU in a Settlement Agreement
5 in Mr. Lane's bankruptcy. (*In re: Robert Lane, Debtor*, Bankruptcy Court for the District of
6 Wyoming, Case No. 11-20398, Document 199-1, attached hereto as "Exhibit 12.") In that
7 Settlement Agreement, Patricia A. Lane and Patricia E. Lane acknowledge that DFWU, LLC
8 assets held by Lane family members are not part of Mr. Lane's bankruptcy estate. (Exhibit 12,
9 Lane BK, Case No. 11-20398, Doc. 199-1, page 6 of 24.) They further acknowledge that
10 securities held in Hilton Head, South Carolina in the amount of \$1,900,000.00 is a "DFWU -
11 Non Estate Asset" which is characterized as a "Loan to P. Lane." (Exhibit 12, Lane BK, Case
12 No. 11-20398, Doc. 199-1, page 23 of 24.)¹

14 We have since learned that Patricia E. Lane has used at least \$500,000 of this money to
15 settle a lawsuit brought against her and Patricia A. Lane in South Carolina. (See: Exhibit 14, a
16 redacted copy of the settlement agreement in *Vikki L. Lane v. Patricia E. Lane et al*, Beaufort
17 County Court, Case#2013-CP-07-2997.)²

19 This summary of evidence shows that the Defendants in this case knew that these were
20 Plaintiff's retirement and IRA assets to which Plaintiff is entitled, establishes Patricia E. Lane
21 and Patricia A. Lane's acknowledgement of their positions of trust, and traces the money directly
22 from Mr. Lane's retirement accounts into their pockets. It further demonstrates Defendants'
23

24
25 ¹ It should be noted that Defendant Scott Meier, of Hathaway & Kunz, LLP was a signatory to
26 this Settlement Agreement. (Exhibit 12, Lane BK, Case No. 11-20398, Doc. 199-1, page 13 of
27 24.) It should also be noted that an email from Scott Meier to Robert M. Lane of August 29,
28 2013 (attached hereto at "Exhibit 13") disclaims the very facts which appear in the Settlement
Agreement and the knowing misrepresentations therein demonstrably show Defendant Scott
Meier's and Hathaway & Kunz, LLP's participation in this fraudulent scheme.

1 acknowledgement of his right to obtain those funds following his bankruptcy. The defendants in
2 this case have conspired to defraud Plaintiff of these assets, and use them for their own benefit.

3 Patricia E. Lane's testimony is key to this litigation.

4 **B. Summary of Discovery Dispute**

5 Plaintiff duly noticed Patricia E. Lane's deposition to take place on March 17, 2017, at
6 10:00 a.m., at Coastal Court Reporting, 1 Corpus Christi Place, Suite 107, Hilton Head Island,
7 SC 29928. This location was chosen so as to be as convenient as reasonably possible to Patricia
8 E. Lane's stated residence and to reduce the of extra strain on her health. A true and correct copy
9 of "Plaintiff Robert Lane's Notice of Deposition to Defendant Patricia E. Lane and Requests for
10 Production of Documents" is attached hereto as "Exhibit 15."

12 Shortly before the deposition was to take place, counsel for Patricia E. Lane stated in a
13 telephone conference that Ms. Lane was scheduled to see a physician, and though Ms. Lane
14 would not appear on March 17, 2017, counsel would reconvene to determine Ms. Lane's
15 availability.

17 On or about March 20, 2017, counsel for Patricia E. Lane produced documents in
18 response to Plaintiffs requests for production.

19 On or about April 11, 2017, counsel for Patricia E. Lane stated in a telephonic conference
20 that Patricia E. Lane would not appear for her deposition for at least two months.

21 On or about May 4, 2017, Plaintiff demanded that Patricia E. Lane appear for a
22 deposition on or before May 26, 2017, or agree to continue trial related dates in this action. (A
23 true and correct copy of said correspondence is attached hereto as "Exhibit 16")
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25
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27 ² It should also be noted that Mr. Meier was a signatory to this agreement as well, further
28 implicating him in the fraudulent conspiracy.

1 On May 8, 2017, counsel for Patricia E. Lane continues to refuse to provide a date at
 2 which she will appear for a deposition and also refuses to stipulate to continue the trial related
 3 dates. (A true and correct copy of said correspondence is attached hereto as "Exhibit 17")

4 **II. THIS COURT SHOULD COMPEL DEFENDANT PATRICIA E. LANE TO APPEAR**
 5 **AT HER DEPOSITION AND CONTINUE TRIAL RELATED DATES**

6 Plaintiff served a Notice of Deposition and Requests for Production of Documents in
 7 compliance with Fed. R. Civ. P. 30. Plaintiff has in good faith conferred with the party refusing
 8 to appear at that noticed deposition pursuant to Fed. R. Civ. P. 37 and Wyoming Local Civil
 9 Rule 37.1(b). As such this Court has authority to compel Patricia E. Lane to attend the noticed
 10 deposition.
 11

12 Defendant Patricia E. Lane has not filed a motion to quash deposition notice pursuant to
 13 Wyoming Local Civil Rule 37.2(a), nor a motion for a protective order pursuant to Fed. R. Civ.
 14 P. 26(c). A motion for a protective order places the burden on the moving party to show good
 15 cause to issue an order to protect a party from annoyance, embarrassment, oppression, or undue
 16 burden or expense. See: Fed. R. Civ. P. 26(c)(1). Defendant Patricia E. Lane's counsel has
 17 claimed that Ms. Lane cannot appear because of medical issues, but has not provided any
 18 documentation or a statement from a physician explaining why those issues prevent her from
 19 giving testimony.
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1 Defendant Patricia E. Lane seeks an indefinite delay in the taking of her deposition. This
2 is not authorized under the Federal Rules of Civil Procedure. Upon a party's failure to attend a
3 deposition after being served with proper notice, the court where the action is pending, may, on
4 motion, order sanctions. See Fed. R. Civ. P. 37(d)(1)(A)(i). The Federal Rules go on to say:
5 "Unacceptable Excuse for Failing to Act. A failure described in Rule 37(d)(1)(A) is not excused
6 on the ground that the discovery sought was objectionable, unless the party failing to act has a
7 pending motion for a protective order under Rule 26(c)."

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9 Dated: May 12, 2017

COHN RENGO

/s/ Martin Cohn

11 By: _____

12 Martin Cohn
13 Attorney for Plaintiff
14 Robert M. Lane
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this proceeding. My business address is: COHN RENGO, 314 East Carrillo Street, Suite 7, Santa Barbara, California 93101.

A true and correct copy of the foregoing document entitled (*specify*): **PLAINTIFF ROBERT LANE'S MOTION TO COMPEL THE DEPOSITION OF DEFENDANT PATRICIA E. LANE AND TO CONTINUE ALL TRIAL RELATED DATES IN THIS ACTION**

will be served or was served in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): The foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 12, 2017, I checked the CM/ECF docket for this proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Martin P. Cohn at marty@cohnrengo.com
 Michael B. Wilkerson at michael@rsiwy.com
 Kerry Lee Beringhaus at klb@bowlaw.com
 Anna Marie Reeves Olson at aro@parkstreetlaw.com
 Weston W. Reeves at wwr@parkstreetlaw.com
 Melinda S. McCorkle at melinda@kemplaw.net
 Roger T. Hargrove at rhargrov@fclaw.com
 Stephen H. Kline at steve@kemplaw.net

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 12, 2017
Date

Raymond Rengo
Printed Name

/s/ Raymond Rengo
Signature

PROOF OF SERVICE